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In The
Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-516

JAPE HOLLEY TAYLOR,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI

SAMUEL S. JACOBSON
DATZ, JACOBSON & DUSEK
320 Southeast First Bank Building
Jacksonville, Florida 32202

Attorneys for Petitioner

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PETITION FOR WRIT OF CERTIORARI

Jape Holley Taylor petitions for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit and says:

OPINIONS BELOW

The opinions rendered in the Fifth Circuit are not yet officially reported. They appear in the records of the Fifth Circuit under the style, *United States of America*, Plaintiff-Appellee, vs. *Jape Holley Taylor*, Defendant-Appellant, No. 29198.

JURISDICTION

The opinion and judgment of the Fifth Circuit were filed on June 2, 1971. A timely petition for rehearing en banc was denied on August 10, 1971 with four dissents. Copies of the opinion, judgment and ruling on the petition for rehearing en banc are appended as Exhibits A, B and C, respectively. This Court's jurisdiction is invoked under 28 U.S.C. §1254.

STATUTE INVOLVED

Section 6(j) of the Military Selective Service Act of 1967 (50 App. U.S.C. 456(j)) provides in pertinent part:

> "Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the Armed Forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. As used in this sub-section, the term 'religious training and belief' does not include essentially political, sociological or philosophical views, or a merely personal moral code . . ."

POINT PRESENTED

THE MISLEADING NATURE OF THE SELECTIVE SERVICE'S CONSCIENTIOUS OBJECTOR APPLICATION FORM (FORM 150), TOGETHER WITH MISLEADING INFORMATION FROM THE CLERK OF THE LOCAL BOARD INVALIDATED TAYLOR'S SELECTIVE SERVICE SYSTEM PROCESSING.

STATEMENT OF CASE

Taylor was convicted in the Northern District of Florida for failure to submit to induction into the Armed Forces. He was sentenced to four years imprisonment.

Taylor is an undoubted conscientious objector. He was raised in a pacifist tradition. His father, Professor of Medicine and Chairman of the Division of Cardiology at the University of Florida Medical Center, is a pacifist. His maternal grandfather, a Congregationalist minister, was a World War I pacifist. A draft-age younger brother is seeking conscientious objector status. Although no express finding of fact was made, the trial judge indicated several times that he considered Taylor sincere, albeit misguided.

Upon graduation from high school, Taylor held a student deferment while a student for one year at the California Institute of Technology. He then accepted a computer programming position at the University of Florida Educational Center. At that point, his student deferment expired.

Taylor then made a timely request of his draft board for conscientious objector forms. He went to the draft board office and obtained the standard Form 150 prescribed for conscientious objectors. Prominently displayed on the front page of the Form 150 is the text of §6(j) of the Military Selective Service Act of 1967 (50 App. U.S.C. 456(j)), including the following:

> "Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the Armed Forces of the United States, who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. As used in this sub-section, the term 'religious

> training and belief' does not include essentially political, sociological or philosophical views, or a merely personal moral code."

On the inside, the form asks various questions about the applicant's "religious training and belief", tending to confirm the initial impression that conventional religious training and belief is requred.

Nowhere does the form intimate that "religious training and belief" reaches personal, non-conventional beliefs as ruled by this Court in *United States v. Seeger*, 380 U.S. 163 (1965) and *Welsh v. United States*, 398 U.S. 333 (1970).

A copy of this form is appended as Exhibit D.

On reading the form at the draft board office, Taylor understood it to require a conventional religious basis. He asked the board clerk how literally the board would interpret the statute, and she told him that, ". . . that would be up to the board at that time." Taylor then told the clerk that he was not sure he could sign the application and she told him, ". . . there [were] some young men who couldn't sign it and some who went to jail."

Taylor took the Form 150 home to consider it. There he studied it with his father, and father and son together concluded that it applied only to conventional religious beliefs and that Taylor could not sign it because his objections, though conscientious, were not based on conventional religion.

Thereafter, the board clerk sent Taylor a letter, asking him to submit his completed Form 150 or withdraw his claim to be a conscientious objector. In reply, after issuance of an

induction order, Taylor sent the following letter:

> "Dear Sirs,
>
> It is my belief that war is wrong. Men must learn to get along with each other; they must not solve their differences by killing. I believe that the situation in the world today in which people are so afraid of each other that the military is the largest part of our government is wrong. However, my beliefs are not based upon any conventional religious upbringing, but upon my moral upbringing and personal observation and reading of people and society. Because of these beliefs, I requested conscientious objector status and was given Form 150, I believe, to fill out and sign. This form stated that one's moral beliefs and personal philosophy were not sufficient grounds for requesting Conscientious Objector status; only religious opposition was acceptable. For this reason, I was unable to complete and sign this form, which I believe discriminates against me. I was also unable to follow instructions to either return Form 150 or renounce my claim because I did not want to renounce my claim entirely. I am now scheduled for induction on May 16. I plan to refuse induction, but would gladly do an appropriate alternate duty. I am now in Boston on a job-related trip, and will return to Gainesville on May 18 to face whatever action is deemed appropriate.
>
> Sincerely,
>
> Jape Holley Taylor
> 8-17-49-400."

Taylor testified at trial to beliefs squarely within *Seeger* and *Welsh* (although Welsh had not then been decided). The trial judge ruled, however, that Congress had intended,

by deletion of all references to "Supreme Being" from the conscientious objector provisions of the 1967 Act, to repeal this Court's ruling in *Seeger*. Since Taylor was charged under the 1967 Act, the trial judge held that Taylor could not qualify for lack of any conventional religious basis.[1]

The Fifth Circuit did not pass upon, or even advert to, the trial court's interpretation of the 1967 amendment. Instead, the Fifth Circuit ruled that Taylor had "unilaterally decided on uncounseled, subjective information that he could not qualify" without making use of the "ready availability of information and advice at the local board," and that Taylor accordingly could not complain about being misled. A petition for rehearing en banc was denied with four judges dissenting (Chief Judge Brown and Judges Goldberg, Godbold and Simpson).

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[1]Both Seeger and Welsh were charged under the Universal Military Training and Service Act, 50 App. U.S.C. 456(j) (1958 Ed.)

ARGUMENT

The Fifth Circuit's Decision Presents an Important Question of National Consequence Involving the Effectuation of this Court's Decisions

The efficacy of this Court's rulings in *United States v. Seeger*, 380 U.S. 163 (1965) and *Welsh v. United States*, 398 U.S. 333 (1970) is seriously imperiled by the Selective Service System's Form 150. As pointed out by two of the dissenting Fifth Circuit judges, the form "at its best . . . is a half truth, and at worst . . . is clearly wrong." Most normal persons reading the form would draw an understanding contrary to the interpretation of the law by this Court.

The importance of the form in administration of the conscientious objector laws cannot be overstated. While the harmful effects of the form have recently been ameliorated by issuance of an explanatory brochure, the form continues to be the basic conscientious objector document and the foundation stone of conscientious objector claims. At the time of Taylor's processing, it was the only information normally provided potential conscientious objector applicants and, with the exception of the additionally misleading comments by the clerk, was the only information provided Taylor.

The phraseology of the form's questions is especially important. Even a non-conventional objector who realizes that he can claim conscientious objector status is required to frame his answers in terms of questions couched along lines deemed improperly restrictive by this Court.

That misleading actually occurs is clear. The majority of courts and draft boards who dealt with almost identical language for years prior to *Seeger* thought that conventional religion was required. See e.g. *Berman v. United States*,

156 F.2d 377 (9th Cir. 1946). The necessity for *Welsh* five years after this Court's definitive statement in *Seeger* shows the extent to which the old, restrictive interpretation persisted, doubtless fostered in large part by the misleading Form 150. This Court expressly commented in *Welsh* that, ". . . very few registrants are fully aware of the broad scope of the word 'religious' as used in §6(j) . . .". 398 U.S. at 341.

There is no way, of course, to know how many bona fide conscientious objector claims have been frustrated by the Form 150, either because a registrant was deterred from filing or was hampered in explanation of his views or because board members were caused to judge claims improperly. The problem has surfaced several times, however, in cases which have made their way to the upper levels of the appellate system. As this Court noted in both *Seeger* and *Welsh*, the registrants there understood the Form 150 to call for conventional religion and submitted it only after altering the form by striking words from it. Other cases involving the same problem are *United States v. Powers*, 413 F.2d 834 (1st Cir. 1969), cert. denied 396 U.S. 923 (1969); *United States v. Haseltine*, 415 F.2d 334 (9th Cir. 1969); and *United States v. Yoha*, ... F.2d ..... (9th Cir. 1971).

The problem is more acute because of the very sensitive First Amendment concerns intimately associated with, and perhaps inherent in, conscientious objection. Because of the inevitability with which criminal prosecution attends failure of a true conscientious objector to be properly classified, the absence of notice or discernible standard in the form operates together with the misleading to present a most serious problem in a most sensitive area.

Arguably, the incredible failure of the Selective Service System at the time of Taylor's processing to provide any

explanatory material was also a violation of due process, in view of the strict rules of waiver imposed on a registrant who fails to assert timely and sufficient classification claims. Compare, for example, the elaborate informational program apparently considered necessary by the Internal Revenue Service.

The Selective Service System cannot be counted on to rectify the harm caused by noncompliance with *Seeger* and *Welsh*. For two and one-half years after *Seeger*, the Selective Service System continued to dispense a Form 150 even more violative of the *Seeger* doctrine than the instant one. This was probably explained by the open opposition to *Seeger* by the Selective Service System during Congressional hearings in connection with the 1967 Act.[2] This attitude also probably explains the unresponsiveness to *Seeger* of the current form, which was adopted to conform to the 1967 Act. Despite a change in Selective Service administration, the current misleading form continues in use sixteen months after rendition of *Welsh*.

Even if the Selective Service System agreed to correct the current Form 150 immediately without action by this Court, the number of persons like Taylor still being subjected to injustice because of past and present use of the form would still merit this Court's attention.

The Standard of Conduct Imposed on Taylor by the Fifth Circuit Conflicts with Decisions in Other Circuits on an Important Matter of Federal Law

An important question is also presented by the standard of conduct imposed upon Taylor by the Fifth Circuit.

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[2]House Report No. 267 (Armed Services Committee), 91st Congress, 1st Session (1967).

Selective Service misinformation to registrants is an ongoing problem which has in recent years resulted in a growing body of Circuit level opinions. *United States v. Lowell*, 437 F.2d 906 (1971); *United States v. Wroblewski*, 432 F.2d 423 (9th Cir. 1970); *United States v. Burns*, 431 F.2d 1070 (10th Cir. 1970); *United States v. Lansing*, 424 F.2d 225 (9th Cir. 1970); *United States v. Williams*, 420 F.2d 288 (10th Cir. 1970). See also *United States v. Bagley*, 436 F.2d 55 (5th Cir. 1970) and *Powers v. Powers*, 400 F.2d 438 (5th Cir. 1968). The general rule of these cases is that Selective Service misinformation which frustrates the assertion of important claims by registrants invalidates the classification process.

Those cases are undercut by the ruling here that a registrant, who is in fact misled by official information having a clear capacity for misinforming the normal person, may, nonetheless, not complain because of the availability of other information from which he could have searched out the real rule. In effect, the Fifth Circuit says that a registrant may not take apparently adverse information from his draft board at face value, but must check it to be sure that his board is not misleading him.

The Fifth Circuit's approach is inconsistent with the paternal, nonadversarial premise central to the Selective Service System's rules and procedures. Nor does it take into proper account the age, inexperience and unsophisticatedness of the Selective Service System's registrants.

The conclusion of the Fifth Circuit that Taylor acted unreasonably is entirely unrealistic. Taylor could hardly have acted more reasonably. At the proper time he went to his board to take the proper steps required of him. He obtained the only explanatory material provided by his presumptively friendly government. He asked reasonable questions of the

board's clerk, the only visible representative and spokesman for the board. He received only cryptic, discouraging replies, with no suggestion that he might find better information elsewhere in the System. Taylor then went home and conferred with his father. Father and son together drew the same meaning from the language of the form that courts and draft boards had drawn both before and after *Seeger* - in fact, the same interpretation ultimately drawn by Taylor's trial court. The statement of the board clerk that other boys were not able to sign the form and had to go to jail tended only to buttress the apparent conventional religious test of the form.

The Fifth Circuit's survey of the "ready availability" of information from the Selective Service System is equally unrealistic. The Fifth Circuit points out that Taylor's notice of classification plainly advised him "FOR INFORMATION AND ADVICE, GO TO ANY LOCAL BOARD." That is what Taylor did. When he got there, he asked questions of the person in charge and relied on the information he got. As pointed out by the Report of the National Advisory Commission on Selective Service (Marshall Commission), registrants commonly assume that information from board clerks is authoritative. The Commission observed:

> "The 'anonymity' of the Boards is perhaps one reason for this impression; even more likely, however, is the method of board operation. Many board members have heavy professional and business duties. They usually meet in the evening to make their classification decisions. A registrant seeking information by phone or in person would no doubt find the clerk the only person on hand. The more efficient she is, the more authoritative her answers may appear to the

registrant. The assumption which results is understandable, but misleading."

In Pursuit of Equity: Who Serves When Not All Serve? Report of the National Advisory Commission on Selective Service (Marshall Commission), U. S. Government Printing Office (1967), Page 21.

The Fifth Circuit points out that government appeal agents are theoretically available for registrants. The National Advisory Commission on Selective Service found, however, with regard to government appeal agents, that:

"They are also the most elusive components of the entire system. The research team which reported the results of intensive one-state study told the Commission, 'The clear fact is . . . that appeal agents are almost totally inactive. Most board members barely know who their appeal agent is and cannot recall when he was last in the office. Clerks freely admit that their appeal agents have checked no files, seen no registrants, made no appeals in years. What advising of registrants there is, must be done by clerks or by occasional private attorneys. Most registrants are probably quite unaware that there are appeal agents in the system.' The Commission, on the evidence presented to it, shares that doubt. The condition appears to be uniform throughout the System - indeed, perhaps, it is the most uniform characteristic."

In Pursuit of Equity: Who Serves When Not All Serve? Report of the National Advisory Commission on Selective Service (Marshall Commission), U. S. Government Printing Office (1967), Pages 28-29.

As noted by the Fifth Circuit, the Selective Service regu-

lations do provide that board members shall "advise and assist registrants" and that the System has a "positive information policy." But the Selective Service System does not affirmatively communicate this information to registrants. The only way a registrant can find this out is to research the regulations, if he can find a copy, and only a rare young man could be expected to do that. Even if he found these declarations of policy, they would do him little good since the Selective Service System has done little to implement them.

The regulations also provide that the draft boards may appoint advisers for registrants, whose names shall be posted at the board office. 32 C.F.R. 1604.41. Taylor's clerk said that his board did have an adviser; but that she did not know who he was, and his name was not posted.

The Fifth Circuit suggests that Taylor could have obtained advisory information from the board itself. This is inaccurate. When Taylor asked the clerk what interpretation the board might give the religious requirement, the clerk told him ". . . that that would be up to the board at that time.", meaning that Taylor would find out when the board either approved or rejected his application. There is no procedure by which a registrant can address questions to his board and obtain advisory information.

The Fifth Circuit's decision resulted in injustice for Taylor and will result in the same for other people if not overturned. This Court has never spoken on the problem either of misinformation by the Selective Service System or omission of necessary information by the Selective Service System. This Court's attention is now badly needed to provide guidance in this area of growing concern.

CONCLUSION

Taylor's conviction should be vacated, and his case should be remanded to the Selective Service System so that he can have an opportunity to file a conscientious objector's claim for consideration by his local board.

Respectfully submitted,

By .....

SAMUEL S. JACOBSON
Datz, Jacobson & Dusek
320 Southeast First Bank Bldg.
Jacksonville, Florida 32202

CERTIFICATE OF SERVICE

I DO CERTIFY that a copy hereof was furnished to the Solicitor General, Justice Department, Washington, D. C., and to the United States Attorney for the Northern District of Florida, Tallahassee, Florida.

.....

ATTORNEY

APPENDIX

Exhibit A

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 29198

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

JAPE HOLLEY TAYLOR,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Florida

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(June 2, 1971)

Before GEWIN, COLEMAN and AINSWORTH, Circuit Judges.

GEWIN, Circuit Judge: Appellant Taylor was convicted for refusing to submit to induction into the armed services in violation of 50 U.S.C. App. § 462(a). On appeal he contends that his local Selective Service Board gave him mis-

information which caused him to refrain from making an application for conscientious objector status prior to the date on which he was to report for induction. We affirm his conviction.

The background facts are these: Following graduation from high school, Taylor on December 4, 1967, was given a 2-S student deferment for one year while he attended California Institute of Technology.[1] This classification was changed to 1-A (Available for Service) on November 14, 1968, when Taylor became ineligible for student deferment by accepting full time employment. Upon termination of his student deferment Taylor went to his draft board on December 16, 1968 where he requested and received Selective Service Form 150 (Application Form for Conscientious Objector Classification). The form, which quoted statutory language, stated that his conscientious objector request must be founded on a "religious belief." Because appellant had no conventional religion, he asked the board secretary, Mrs. Duncan, whether the requirement would be interpreted literally. Mrs. Duncan replied that such a question must be answered by the Board. Mrs. Duncan also advised Taylor that he had 30 days in which to return this form executed in full. Taylor took the form home with him but asserts that he subsequently decided that he could not conscientiously sign it because he did not have a religious belief in the traditional sense.

On April 24, 1969, the Board ordered Taylor to report for induction on May 16, 1969. Taylor did not report as ordered; instead he mailed a letter to the Board from Boston, Massachusetts (his local board was in Gainesville, Florida) stating that he would refuse induction for consci-

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[1] On his initial questionnaire Taylor wrote "NA" (not applicable) in the section entitled "Series VIII. — Conscientious Objector."

entious reasons.[2] Prior to that time Taylor made no formal effort to assert a conscientious objector claim. The Conscientious Objector Form which he procured from the Board was never filled in and returned.[3]

Appellant's major contention is that he was misled by SSS Form 150 into thinking that it would be not only fruitless

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[2]

Local Board # 17
Federal Building
Gainesville, Florida
33601

"Dear Sirs,

It is my belief that war is wrong. Men must learn to get along with each other; they must not solve their differences by killing. I believe that the situation in the world today in which people are so afraid of each other that the military is the largest part of our government is wrong. However, my beliefs are not based upon any conventional religious upbringing, but upon my moral upbringing and personal observation and reading of people and society. Because of these beliefs, I requested conscientious objector status, and was given Form 150, I believe, to fill out and sign. This form stated that one's moral beliefs and personal philosophy were not sufficient grounds for requesting Conscientious Objector status; only religious opposition was acceptable. For this reason, I was unable to complete and sign this form, which I believe discriminates against me. I was also unable to follow instructions to either return form 150 or renounce my claim because I did not want to renounce my claim entirely. I am now, scheduled for induction on May 16. I plan to refuse induction, but would gladly do an appropriate alternate duty. I am now in Boston on a job-related trip, and will return to Gainesville on May 18 to face whatever action is deemed appropriate.

Sincerely,
Jape Holley Taylor
8-17-49-400."

[3]On cross-examination Taylor testified as follows:

Q. Mr. Taylor, you said you didn't sign the application for CO, what do you think the Board was going to pass on if you didn't put something before them?
A. I don't know.
Q. In other words, if the Board had nothing to go on did you know you had a right to appeal if they turned you down on your objection status?
A. Yes, sir.
Q. You didn't fill out the Conscientious Objector questionnaire there and you wrote a letter back and you didn't send it back to them so they had nothing at all before them, the draft clerk to present to the Board, did they?
A. That's right.

but also unconscionable for him to seek conscientious objector status; as a result he claims that he was deprived a full opportunity to pursue an available classification. It is true that SSS Form 150 does not mention or suggest the very broad construction of the requirements for conscientious objector religious requirements as interpreted by the Supreme Court in *United States v. Welch*,[4] and *United States v. Seeger*.[5] In this regard it could be argued that the old Form 150 possibly did leave some questions unanswered.[6] Nevertheless, the evidence in this case is undisputed that appellant acting unilaterally decided on uncounselled, subjective information that he could not qualify.[7] Although cases exist where misleading government activity or information constitutes a good defense to a criminal charge,[8] more is required than a bald assertion that the defendant was as a subjective matter misled, and that his subsequent action resulted from his mistaken belief. As the court stated in *United States v. Lansing*:[9]

> When a defendant claims, as does appellant here, that his criminal conduct was the result of reliance on misleading information furnished by the government, society's interests in the uniform enforcement of law

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[4]398 U.S. 333 (1970).

[5]380 U.S. 163 (1965).

[6]Cf. Gillette v. United States, ___ U.S. ___, 28 L.Ed.2d 168 (1971)

[7]In United States v. Powers, 413 F.2d 834, 837 (1st Cir. 1969) the court observed:

> Were unilateral, subjective, uncounselled misunderstanding of a Selective Service requirements and definitions to b a defense to prosecution, an already laboring vehicle would in all likelihood be completely immobilized.

[8]See: United States v. Lowell, 437 F.2d 906, 907 (9th Cir. 1971); United States v. Bagley, 436 F.2d 55 (5th Cir. 1970). United States v. Williams, 420 F.2d 288 (10th Cir. 1970); United States v. Bryan, 263 F. Supp. 895 (N.D. Ga. 1967).

[9]424 F.2d 225 (9th Cir. 1970).

> requires at the very least that he be able to show that his reliance on the misleading information was reasonable — in the sense that a person sincerely desirous of obeying the law would have accepted this information as true, and would not have been put on notice to make further inquiries.[10]

Under the facts and in the circumstances of this case, we are convinced that Taylor acted unreasonably. Taylor testified that he interpreted the language of the form to mean that some formal or conventional religious basis was required for a conscientious objector classification, yet he made no real effort to ascertain the actual requirements for the classification despite the ready availability of information and advice at the local board. Following the example of the First Circuit Court of Appeals in *United States v. Powers*,[11] we take judicial notice of the fact that a registrant's Notice of Classification, which is required to be in his personal possession at all times, plainly advises registrants in capital letters — "For Information and Advice, Go To Any Local Board." Other provisions advise registrants of the availability of Government Appeal,[12] of board members ready "to advise and assist registrants in the preparation of questionnaires and other selective service forms,"[13] and of the "positive information policy" of the Selective Service Board.[14] Moreover, Taylor was specifically advised by Mrs. Duncan at his Board that to obtain the status of conscientious ob-

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[10]Ibid at 227. See: United States v. Wroblewski, 432 F.2d 422 (9th Cir. 1970); United States v. Haseltine, 415 F.2d 334 (9th Cir. 1969).

[11]413 F.2d 834, 837 (1st Cir. 1969).

[12]See 32 C.F.R. § 1604.71.

[13]32 C.F.R. § 1604.41.

[14]32 C.F.R. § 1606.61.

jector he would have to submit a written request within 30 days. When he failed to submit SSS Form 150 within the specified time limit, Mrs. Duncan wrote him on February 17, 1969, to do so at once or else he would waive any claim to the status of conscientious objector.[15] This backdrop of information was certainly sufficient to put a person sincerely desirous of complying with the law on notice that he could have inquired of the board and learned the true status of his claim.[16] Having failed to ask for a reclassification or to press in any way before induction that he should be reclassified, or to provide the local board with any information which could warrant reconsideration of his classification, Taylor cannot now charge the board with unconscionable dereliction in violation of due process of the law. Selective Service Boards cannot be charged with neglect of duty arising out of the secretive, unilateral, uncounselled, subjective and uncommunicated decisions of a registrant based upon his individual ideas and concepts of broad philosophical, moral or religious questions.[17]

Appellant's second contention is that the Board committed error by refusing to reconsider his classification in light of

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[15]Mrs. Duncan wrote to appellant as follows:

Feb. 17, 1969

Dear Sir:

On December 16, 1968 you were issued SSS Form 160. This was to be completed and returned to this office in 30 days. To date this completed form has not been returned. Please return this form at once or sign the statement below and return. Thank you.

Yours truly
FOR THE BOARD
(Mrs.) Reba K. Duncan
Executive Secretary

I hereby withdraw my claim as a Conscientious Objector.
Signed: _____
Registrant

[16]For example, see: United States v. Welch, 398 U.S. 333 (1970); United States v. Seeger, 380 U.S. 163 (1965).

[17]See McGee v. United States, ___ U.S. ___ (No. 362, May 17, 1971).

his post-induction letter.[18] While courts have exercised discretion in rare and unusual cases in determining whether to consider conscientious objector claims filed after an order to report for induction but before refusal to report,[19] the courts are virtually unanimous in refusing to require boards to recognize post induction claims.[20] As the court said in *Palmer v. United States*:[21]

> Classification functions of the local board cease with induction, and a registrant cannot, by refusing to submit to induction, impose upon the board any new duties respecting reclassification or reopening . . . To permit such imposition would be highly disruptive of the Selective Service process.[22]

The reason for the strict adherence to this rule against consideration of post induction claims was discussed with approval by the Supreme Court in *Ehlert v. United States*.[23]

> A regulation explicitly providing that no conscientious objector claim could be considered by a local

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[18] See note 2.

[19] United States v. Long, 435 F.2d 830 (10th Cir. 1971); United States v. Williams, 420 F.2d 288 (10th Cir. 1970).

[20] United States v. McDuffie, ___ F.2d. ___ (5th Cir. 1971) [No. 29780, May 11, 1971 — slip opinion p. 4]; United States v. Lowell, 437 F.2d 906, 908 (9th Cir. 1971); United States v. Schrader, 435 F.2d 854, 855 (9th Cir. 1971); United States v. Danell, 435 F.2d 834 (1st Cir. 1970): United States v. Collins, 426 F.2d 765, 766 (5th Cir. 1970); United States v. Robley, 423 F.2d 613 (9th Cir. 1970); United States v. Crutchfield, 422 F.2d 398 (4th Cir. 1970); Straight v. United States, 413 F.2d 263 (9th Cir. 1969); Dugsdale v. United States, 389 F.2d 482 (9th Cir. 1968).

[21] 401 F.2d 226, 227 (9th Cir. 1968).

[22] Ibid at 227-228.

[23] ___ U.S. ___ (No. 120, April 21, 1971). See also: United States v. McDuffie, ___ F.2d ___ (5th Cir. 1971) [No. 29780, May 11, 1971 — Slip Opinion at 4].
At oral argument it was felt that a decision in *Ehlert* would have a substantial bearing on the issues here presented. Accordingly, we delayed our decision until the *Ehlert* opinion was released.

board unless filed before the mailing of an induction notice would, we think, be perfectly valid, provided that no inductee could be ordered to combatant training or service before a prompt, fair, and proper in-service determination of his claim. The Military Selective Service Act of 1967 confers on the President authority "to prescribe the necessary rules and regulations to carry out the provisions of this title. . ." 50 U.S.C. App. § 460(b) (1). To read out of the authority delegated by this section the power to make reasonable timeliness rules would render it impossible to require the submission, before mailing of an induction notice, of a claim matured before that time. The System needs and has the power to make reasonable timeliness rules for the presentation of claims to exemption from service.

A regulation barring post-induction notice presentation of conscientious objector claims, with the proviso mentioned, would be entirely reasonable as a timeliness rule. Selective Service boards must already handle prenotice claims, and the military has procedures for processing conscientious objector claims that mature in the service. Allocation of the burden of handling claims that first arise in the brief period between notice and induction seems well within the discretion of those concerned with choosing the most feasible means for operating the Selective Service and military systems.[24]

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[24]Ibid at 2-3. The instant case is not identical to *Ehlert* because there is no claim of crystallization of belief after the receipt of notice of induction but rather this is a case of late filing of a previously matured conscientious objector's belief. It would appear that a registrant who asserts that his conscientious objector beliefs crystallized after receipt of induction notice would have a stronger case than one who claims to have held such beliefs long before receipt of such notice. See: United States v. Nix, 437 F.2d 746 (9th Cir. 1971).

There was no due process violation in the draft board's refusal to reconsider Taylor's application. The Selective Service Board has no obligation to act upon requests which are made by registrants after the date for his induction has passed.[25] Accordingly, the judgment of conviction is AFFIRMED.

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[25] Ehlert v. United States, ___ U.S. ___ (No. 120, April 21, 1971); Austin v. United States, 434 F.2d 1301 (5th Cir. 1970); United States v. Berger, 434 F.2d 610, 611 (9th Cir. 1970); United States v. Hosmer, 434 F.2d 209 (1st Cir. 1970). See: United States v. Uhl, 436 F.2d 773, 774 (9th Cir. 1970); United States v. Jones, 423 F.2d 636 (4th Cir. 1970); Straight v. United States, 413 F.2d 263, 264 (9th Cir. 1969).

Exhibit B

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 1970

No. 29198

D. C. Docket No. CR 1279

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

JAPE HOLLEY TAYLOR,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Florida

Before GEWIN, COLEMAN and AINSWORTH, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Florida, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

June 2, 1971

Issued As Mandate:

Exhibit C

CORRECTED

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 29196

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAPE HOLLEY TAYLOR,

Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Florida

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ON PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC
(Opinion June 2, 1971, 5 Cir., 1971, ... F.2d .....).

(August 10, 1971)

Before GEWIN, COLEMAN and AINSWORTH, Circuit Judges.

PER CURIAM: The Petition for Rehearing is DENIED and the Court having been polled at the request of one of

the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it, (Rule 35 Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the Petition for Rehearing 7n Banc is also DENIED.

Before BROWN, Chief Judge, WISDOM, GEWIN, BELL, THORNBERRY, COLEMAN, GOLDBERG, AINSWORTH, GODBOLD, DYER, SIMPSON, MORGAN, CLARK, INGRAHAM and RONEY,
Circuit Judges.

BROWN, Chief Judge, with whom GODBOLD, Circuit Judge, joins, dissenting:

Without now determining what the outcome should be the dissenting opinions reflect that this is a matter of great importance (which the panel recognized as well), and that it is enbancworthy. I dissent from the failure to grant rehearing en banc.

GOLDBERG, Circuit Judge, with whom SIMPSON, Circuit Judge, joins, dissenting:

Conscious of the travail, dedication, and scholarship that went into the writing of the panel's opinion in this case, it was with great reluctance that I requested en banc consideration. Nevertheless, because of the importance of the issues decided and because of my fundamental disagreement with the conclusions reached therein, I felt that en banc ventilation was essential. Now that my request has been rejected, I feel compelled to record my dissent.

Though there is very little that can be said in view of the lucid dissent of my Brother Simpson, an opinion in which I fully concur, my proclivity for verbosity, perhaps, impels me to add the following thoughts. In the first place, I fully sub-

scribe to Judge Simpson's analysis of the front page of Selective Service Form 150, and his conclusion that at best it is "a half truth," and at worst it is "clearly wrong." That Form, devised for an earlier time, cannot be accepted uncritically in this post-*Welsh* and *Seeger* era of Selective Service law. The panel itself admits that the Form may be ambiguous or misleading. While it is true that it is couched in terms of the statute's particular phraseology, it seems unlikely to me that a layman would construe the language to encompass more than conventional religious beliefs. Certainly, the Form does nothing to dispel this rather obvious interpretation. I would think that in this light a registrant would be acting reasonably in relying, without more, on the only explanatory material provided by the Selective Service System. The printed word, after all, has its own talismanic fetishism. Where it has been issued and distributed by the Government and thus bears a governmental imprimatur, it becomes in the hands of the registrant ipse dixit. It would seem to me, then, that the burden should be on the Government to provide sufficient information to rebut and to clarify the otherwise obvious meaning derivable from the words in this Form.

Even if it be assumed that the Form was merely ambiguous and not affirmatively misleading, so that a registrant might have some obligation to investigate, an assumption to which I do not subscribe, I would still disagree with the panel. In the first place, characterizing Taylor's misapprehension as "secretive," "subjective," and "individual," as the panel does in its opinion, is at best irrelevant. Certainly Taylor's conclusion that he could not in good faith fill out the form could be characterized as subjective, but this determination was derived from the ambiguity of the form — an objective source. The real issue then is not the subjectivity of Taylor's mistaken conclusion, but whether such a conclu-

sion was reasonable. The nub of this issue, as the panel notes, is whether or not Taylor acted reasonably and diligently in investigating his entitlement to conscientious objector status. It is at this point that I disagree with the panel, for it seems to me that Taylor clearly acted reasonably. He went to his board to apply for conscientious objector status and met with and asked questions of its only visible representative, the Clerk. Receiving only evasive and ambiguous answers, Taylor conferred with his father, and both determined, quite reasonably it seems to me, that Taylor did not qualify for the exemption. Therefore, thinking that he had no right to a conscientious objector classification under the Selective Service System's rules and regulations, Taylor did not submit Form 150. In Taylor's view to have claimed conscientious objector status when he felt he did not qualify would not only have been an act of bad faith but also an act of futility. The panel, however, exprobrates Taylor for failing to do more. I regret that a felony conviction should turn on a registrant's failure to pursue a series of additional, though obviously, at least to him, futile acts.

SIMPSON, Circuit Judge, with whom GOLDBERG, Circuit Judge, joins, dissenting:

I respectfully dissent from the Court's failure to grant rehearing en banc.

It is my conviction that the Selective Service System Form for making application for conscientious objector status (Form 150) is patently and unreasonably misleading to most registrants. The inference is compelling that this is responsible for causing many registrants with valid CO claims (including the appellant Taylor) to forego applying for such status. The front page of Form 150 reads:

> Section 6(j) of the Military Selective Service Act of

1967 provides: "Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the Armed Forces of the United States, who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. As used in this subsection, the term 'religious training and belief' does not include essentially political, sociological, or philosophical views, or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the Armed Forces under this title, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board pursuant to Presidential regulations may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title."

Most registrants are not lawyers. Without guidance "religious training *and* belief" must be understood by them to be used in the conventional sense, that is to say, in addition to belief in a Supreme Being, as including training and membership in and adherence to the beliefs of a formally constituted religious organization. What the forms fails to inform the registrant is that two United States Supreme Court

opinions, *United States v. Seeger*, 1965, 380 U.S. 163, and *Welsh v. United States*, 1971, 398 U.S. 333, have considerably enlarged on the conventional meaning of "religious training and belief", and have held that in some circumstances deeply held personal beliefs not commonly thought of on the street as "religious" may qualify as "religious" within the meaning of the statute. Form 150 not only does not reveal this critical legal development to the layman registrant, but actually appears to indicate a precisely opposite meaning – that deeply held personal beliefs cannot be the basis for a CO claim. At its best, Form 150 is a half truth, and at worst, the information contained therein is clearly wrong. In many areas of the law we recognize that to neglect to reveal a material fact, in effect to tell a half truth, may be as misleading and as culpable as an outright lie. That doctrine fits this situation.

This is not at all to advocate that all court rulings relevant to the Selective Service System must be revealed literally in the forms used. But the information contained on the front cover of Form 150 has been a deceptively misleading half truth since *Seeger* came down, for more than five years. The average registrant may not be expected to keep abreast of Supreme Court rulings. Moreover, the entire emphasis of the Selective Service System at this stage of the process, i.e. classification, is non-legal. Registrants are not allowed to have legal counsel in attendance at a personal appearance before the local board when requesting a classification. Registrants are informed that if they have any *recognizable* legal problems, that the board has a legal advisor who will consult with the registrant upon request. The attitude projected is "You don't need a lawyer because you're in good hands with your square-shooting local Selective Service Board." Further, young registrants, typically age 18 to

26, at least to any significant extent do not have the financial resources to employ lawyers to keep them informed as to recent and relevant Selective Service rulings. For these reasons I would hold the Selective Service System to a strong affirmative obligation of frankness and candor regarding the state of applicable law in its dealings with registrants. Any other standard seems to me shocking in its callousness.

It is a legitimate deduction that the retention of the outdated information on Form 150 nullifies in large part the effect of *Seeger* and *Welsh*. This result may be that intended by high officials of the Selective Service System, but it is unnecessary to specuiate in this respect. The adverse effect on such registrants as Jape Holley Taylor is the same whether caused by negligence or deliberate deception.

The average registrant whose contemplated CO application is based on other than traditional religious grounds may be expected to study the form uncritically, give the word "religious" its common every day connotation involving organized religion and conclude that he does not qualify for CO status. He is unlikely (and should not reasonably be expected) to research the law to determine whether "religious" has any hidden meaning. Only too late, after he refuses induction, is charged criminally and is provided with counsel, does he learn that he may have had a valid CO claim from the beginning. See for example what happened to Taylor, even though he counselled with his college professor father. People of this sort are not criminals. Instead they are the innocent victims of outdated procedural forms.

This case is not an isolated instance. In the past few months this Court has been faced with similar problems created by misinformation given to a registrant by his draft board or its clerk. See, e.g., *Edwards v. Selective Service Local Board No.*

111, 5 Cir. 1970, 432 F.2d 287, *U.S.A. v. Ray Austin Bagley*, 5 Cir. 1970, 436 F.2d 55. *McGee v. United States*, ... U.S. ..... [May 17, 1971, 39 U.S.L.W. 4571] is not at variance with these sentiments. In *McGee* the Court was faced with a non-cooperating registrant who refused to fill out forms, and declared that he would not cooperate with the local board. By contrast, in *Taylor*, *Edwards*, supra, and similar misinformation cases we have cooperative registrants willing to work with local boards to receive the classification to which the law entitles them, who instead find themselves thwarted in that effort by misleading advice from the Selective Service System itself.

There is no indication in the record in this case that Taylor's beliefs are not sincerely held sufficiently to qualify for conscientious objector status under *Welsh* and *Seeger*. His conviction is allowed to stand, however, because he did not timely assert his CO claim. The blame for this tragic set of circumstances should fall squarely on officials of the Selective Service System. I would like to see a holding that the unreasonable actions of the Selective Service System denied to Jape Holley Taylor that due process of law to which he was constitutionally entitled. This conviction should not stand.

Exhibit D

Form approved.
Budget Bureau No. 33-R0116

SELECTIVE SERVICE SYSTEM
SPECIAL FORM FOR CONSCIENTIOUS OBJECTOR

SAMPLE ONLY

(Local Board Stamp)

DATE QUESTIONNAIRE RECEIVED AT LOCAL BOARD

Date of Mailing.....

Complete and return within 30 days.

1. Name of Registrant (First) (Middle) (Last)

2. Selective Service No.

3. Mailing address (Number and street, city, county and State, and ZIP Code)

(The above items, except the date received back at local board, are to be filled in by the local board before the questionnaire is mailed.)

INSTRUCTIONS

A registrant who claims to be a conscientious objector shall offer information in substantiation of his claim on this special form which, when filed, shall become a part of his Classification Questionnaire (SSS Form 100).

Section 6(j) of the Military Selective Service Act of 1967 provides: "Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the Armed Forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. As used in this subsection, the term 'religious training and belief' does not include essentially political, sociological, or philosophical views, or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the Armed Forces under this title, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board pursuant to Presidential regulations may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title."

(R. 16)

Series I.—CLAIM FOR EXEMPTION

INSTRUCTIONS.—The registrant should sign his name to either statement A or B in this seri
If he cannot sign either one, he must indicate why.

A I am, by reason of my religious training and belief, conscientiously opposed to participation in war in a form. I, therefore, claim exemption from combatant training and service in the Armed Forces, but prepared to serve in a noncombatant capacity if called. (Registrants granted this status are classifi I–A–O.)

.....
(Signature of registrant)

B I am, by reason of my religious training and belief, conscientiously opposed to participation in war in a form and I am further conscientiously opposed to participation in noncombatant training and servi in the Armed Forces. I, therefore, claim exemption from both combatant and noncombatant traini and service in the Armed Forces, but am prepared to perform civilian alternative service if call (Registrants granted this status are classified I–O.)

.....
(Signature of registrant)

SAMPLE COPY

Series II.—RELIGIOUS TRAINING AND BELIEF

INSTRUCTIONS.—If more space is needed use extra sheets of paper.

1. Describe the nature of your belief which is the basis of your claim and state why you consid it to be based on religious training and belief.

.....

.....

.....

.....

.....

2. Explain how, when and from whom or from what source you received the religious training a acquired the religious belief which is the basis of your claim. (Include here, where applicable, such info mation as religion of parents and other members of family; childhood religious training; religious a general education; experiences at school and college; organizational memberships and affiliations; boo and other readings which influenced you; association with clergymen, teachers, advisers or oth individuals which affected you; and any other material which will help give the local board the fulle possible picture of how your beliefs developed.)

.....

.....

.....

.....

3. To what extent does your religious training and belief restrict you from ministering to the sick and injured, either civilian or military, or from serving in the Armed Forces as a noncombatant without weapons?

SAMPLE COPY

4. Have you ever given expression publicly or privately, written or oral, to the views herein expressed as the basis for your claim? Give examples.

SAMPLE COPY

Series III—REFERENCES

You may provide your local board with any additional evidence from any source that would support your claim of conscientious objection. You may, if you choose, provide in the space below the names of references who could provide the local board with information regarding your religious training and belief. You may wish to suggest that these references, if given, write directly to the local board in support of your claim.

NAME	FULL ADDRESS	OCCUPATION OR POSITION	RELATIONSHIP TO YOU

A - 22

REGISTRANT'S CERTIFICATE

INSTRUCTIONS.—Every registrant claiming to be a conscientious objector shall make certificate.

NOTICE.—Imprisonment for not more than 5 years or a fine of not more than $10,000, or both fine and imprisonment, is provided by law as a penalty for knowingly making or being a party to the m of any false statement or certificate regarding or bearing upon a classification. (Military Selective S Act of 1967.)

I, ..., certify that I am the registrant n and described in the foregoing statements in this form; that I have read (or have had read to me statements made by and about me, and that each and every such statement is true and complete t best of my knowledge, information, and belief. The statements made by me in the foregoing in my own handwriting.

Registrant sign here ☞ .....
(Signature or mark of registrant)

.....
(Signature of witness to mark of registrant)

.....
(Date)

.....
(Date)

If another person has assisted the registrant in completing this form, such person shall sig following statement:

I have assisted the registrant herein named in completing this form.

.....
(Signature of person who has assisted)

.....
(Occupation of person who has assisted)

.....
(Address of person who has assisted)

.....
(Date)

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-516

JAPE HOLLEY TAYLOR, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Northern District of Florida, petitioner was convicted of willfully refusing to submit to induction into the Armed Forces, in violation of 50 U.S.C. App. 462(a). He was sentenced to four years' imprisonment. The court of appeals affirmed (Pet. App. A-1), and, on August 10, 1971, denied a petition for rehearing *en banc* (Pet. App. A-11), with four judges dissenting (Pet. App. A-12-A-18). The petition for a writ of certiorari was not filed until October 9, 1971, and is

therefore out of time under Rule 22(2) of the Rules of this Court.

The facts are not in dispute. Petitioner registered with his local board at the age of eighteen, and, on December 4, 1967, he received a student (II-S) deferment as a freshman at California Institute of Technology. He held this classification until November 14, 1968, when, because he had left college and accepted full-time employment, he was reclassified I-A.

On December 16, 1968, petitioner went to his local board and requested a conscientious objector application (SSS Form 150). After looking through the application, he asked the board secretary how literally the board would interpret the statutory language of Section 6(j) appearing on the face of the application (Pet. App. A-19). The secretary replied that such a question must be answered by the board (Tr. 69).[1] She also advised petitioner that he had 30 days within which to return the form executed in full (Tr. 26). Petitioner then stated that he did not feel he could sign the form, to which the secretary replied that there were some young men who couldn't sign it, and some who went to jail (Tr. 69-70). Petitioner took the form home; he never returned it to the board.

On February 17, 1969, the board sent him a notice reminding him that his Form 150 had not been returned; he was advised to return it immediately or sign a statement withdrawing his conscientious objector claim (Tr. 45). Petitioner failed to follow

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[1] "Tr." references are to the transcript of proceedings below, a copy of which is being lodged with the Clerk of this Court.

either course (Tr. 45). He was ordered, on April 24, 1969, to report for induction on May 16, 1969.

On the scheduled reporting date, the board received a letter from petitioner stating that he would refuse induction (Pet. App. A-3 n. 2). In the letter, he informed the board for the first time of his "belief that war is wrong." He explained his failure to return the Form 150 in the following terms: "This form stated that one's moral beliefs and personal philosophy were not sufficient grounds for requesting Conscientious Objector status; only religious opposition was acceptable. For this reason, I was unable to complete and sign this form, which I believe discriminates against me."

Petitioner failed to report for induction as ordered and the present indictment and conviction followed. The court of appeals affirmed (Pet. App. A-1-A-9).

1. Petitioner seeks to overturn his conviction on the ground that he was entitled to conscientious objector status and thus was invalidly ordered for induction. Since he failed to request a I-O classification from his local board prior to the scheduled reporting date,[2] however, the argument of improper classification is not available to him. *McGee* v. *United States,* 402 U.S. 479; and see *United States* v. *McDuffie,* 443 F. 2d 1163 (C.A. 5), certiorari denied, No. 71-5012, October 12, 1971.

Petitioner contends here, as he did below, that he

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[2] As the court below pointed out (Pet. App. A-7-A-8), the information submitted thereafter by petitioner in support of his conscientious objector claim need not be considered by the local board. See *Ehlert* v. *United States,* 402 U.S. 99.

should be excepted from the *McGee* rule because he was misled by Selective Service to believe that a request for conscientious objector status based on other than a "conventional religion" (Pet. 8) would be rejected by the local board. He points specifically to SSS Form 150, which quotes the statutory exemption provision (50 U.S.C. App. 456(j)) in its entirety and contains several questions addressed to the subject of the registrant's "religious training and belief" (Pet. App. A-19-A-22).

At the time that petitioner failed to report for induction, this Court had not decided *Welsh* v. *United States,* 398 U.S. 333. Consequently, the only question properly raised by the petition is whether the questioned form was misleading under *United States* v. *Seeger,* 380 U.S. 163. We think not.

In *Seeger,* this Court dealt with the earlier exemption provision (50 U.S.C. App. (Supp. III) 456 (j)) that limited conscientious objector status to those believing in "a Supreme Being." In construing the statute, the Court stated (380 U.S. at 165): "Congress, in using the expression 'Supreme Being' rather than the designation 'God,' was merely clarifying the meaning of religious training and belief so as to embrace all religions and to exclude essentially political, sociological, or philosophical views." Looking to the legislative history and Congress' reliance on *Berman* v. *United States,* 156 F. 2d 377 (C.A. 9), and *United States* v. *Kauten,* 133 F. 2d 703 (C.A. 2), the Court concluded (380 U.S. at 178):

> Thus, we think that rather than citing *Berman*

> for what it said "religious belief" was, Congress cited it for what it said "religious belief" was not. For both *Kauten* and *Berman* hold in common the conclusion that exemption must be denied to those whose beliefs are political, social or philosophical in nature, rather than religious. Both, in fact, denied exemption on that very ground. It seems more likely, therefore, that it was this point which led Congress to cite *Berman*. . . .

Following *Seeger*, Section 6(j) was amended in 1967 to delete the reference to "Supreme Being," while retaining the exclusion for conscientious objector claims based on "essentially political, sociological, or philosophical views, or a merely personal moral code" (50 U.S.C. App. (Supp. IV) 456(j)).[3] It is this amendment that appears in the conscientious objector form.

Selective Service cannot, we submit, be faulted for continuing after *Seeger* to inquire in SSS Form 150 into a registrant's "religious training and belief." As stated by the Court in that case (380 U.S. at 165-166), "the test of belief * * * is whether a given belief that is sincere and meaningful occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God of one who clearly qualifies for the exemption." "[T]he congressional policy," it added, is to provide "exemption from military service for those whose opposition is based on grounds that can fairly be

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[3] In *Seeger*, the Court said (380 U.S. at 186): "The use by Congress of the words 'merely personal' seems to us to restrict the exception to a moral code which is not only personal but which is the sole basis for the registrant's belief and is in no way related to a Supreme Being."

said to be 'religious' " (380 U.S. at 179-180), whose beliefs "are, in his own scheme of things, religious" (*id.* at 185).

The form in question nowhere suggests that a claim of conscientious objection must be based on a "conventional religion" (Pet. 8). Indeed, it provides the registrant considerable latitude in describing "the nature of your belief" (Series II, quest. 1, Pet. App. A-20), and in explaining "how, when and from whom or from what source you received the religious training and acquired the religious belief which is the basis of your claim" (Series II, quest. 2, Pet. App. A-20). Nor is the questioned form misleading because it includes the statutory definition of "religious training and belief" as not including "essentially political, sociological or philosophical views, or a merely personal moral code" (Pet. App. A-19). As indicated above, this Court did not rule otherwise in *Seeger,* and, until the recent decision in *Welsh,* such views were generally considered to be outside the scope of the statutory exemption. See *Welsh* v. *United States, supra,* 398 U.S. at 345 (Harlan, J., concurring).

If, therefore, petitioner was indeed "misled," as he claims, we agree with the court below that the fault lay not with the conscientious objector form, but was due instead to the fact that petitioner "unilaterally decided on uncounselled, subjective information that he could not qualify" (Pet. App. A-4). See *United States* v. *Powers,* 413 F. 2d 834, 837 (C.A. 1); *United States* v. *Yoha,* 445 F. 2d 816 (C.A. 9).[4] That is not the type of

[4] As pointed out by the court below (Pet. App. A-5), petitioner "made no real effort to ascertain the actual requirements for the

unusual circumstance preventing the registrant from exercising his rights that warrants a relaxation of the exhaustion doctrine enunciated in *McGee*. Compare *United States* v. *Davis*, 413 F. 2d 148 (C.A. 4); *Edwards* v. *United States*, 395 F. 2d 453, 454 (C.A. 9), certiorari denied, 393 U.S. 845; *Kidd* v. *United States*, 386 F. 2d 422, 423 (C.A. 10); *United States* v. *Kurki*, 384 F. 2d 905, 907 (C.A. 7), certiorari denied, 390 U.S. 926. Unlike the cases on which petitioner places principal reliance (Pet. 10), we do not deal here with erroneous advice given by a member of the board or by the clerk that caused him not to pursue his claim for exemption within the administrative process. See *United States* v. *Lansing*, 424 F. 2d 225 (C.A. 9).[5]

2. Over a year after petitioner committed the offense which serves as a basis for his conviction, this Court decided *Welsh*. In that case, a plurality of the Court for the first time construed the phrase "religious training and belief" to include deeply held moral and ethical beliefs (398 U.S. at 340), and beliefs "founded to a substantial extent upon considerations of public policy" (398 U.S. at 342).[6]

While that ruling has no direct bearing on the issue

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classification despite the ready availability of information and advice at the local board."

[5] Here, the clerk, when asked by petitioner how the board construed the statutory language, quite properly replied that she was unqualified to answer the question, that it would have to be answered by the board (Tr. 69).

[6] Even after *Welsh*, the questions in the form involved here track the statutory language that was subject to interpretation by this Court. If the congressional language is constitutional, questions drawn from it can hardly be inappropriate.

in this case, we point out that Selective Service has undertaken to revise its Special Form for Conscientious Objectors (SSS Form 150) to be more fully responsive to the principles enunciated by a plurality of the Court in *Welsh*. A copy of the revised form is reproduced in the Appendix *infra*, pp. 9-18. Consequently, there seems little likelihood that the issue raised in this petition in the *Seeger* context will arise in future cases under *Welsh*.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

NOVEMBER 1971.

Appendix

Special Form for Conscientious Objectors

Date Questionnaire Received at Local Board

Local Board Stamp

Date of Mailing _____

Complete and Return Before _____

1. Name of Registrant _____

2. Selective Service Number _____

3. Mailing Address _____

Instructions

A registrant who claims to be a conscientious objector shall offer information in substantiation of his claim on this special form which, when filed, shall become a part of his Classification Questionnaire (SSS Form 100). It is suggested that you read the pamphlet "CO", available at any office of the Selective Service System, before you complete this form.

> Section 6(j) of the Military Selective Service Act provides: "Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. As used in this subsection, the term 'religious training and belief' does not include essentially political, sociological, or philosophical views, or a merely personal moral code. Any person claiming exemption from

combatant training training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the Director may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title. The Director shall be responsible for finding civilian work for persons exempted from training and service under this subsection and for the placement of such persons in appropriate civilian work contributing to the maintenance of the national health, safety, or interest."

Selective Service Form 150 (Revised)

Section I—Claim for Exemption

Instructions—Sign your name to either statement A or B of this section. If you cannot sign either one, indicate why.

A. I am conscientiously opposed to participation in war in any form. I hold moral, ethical, or

religious beliefs which prevent my participating in war in any form. My conscience would not permit any acts which are inconsistent with these beliefs. I therefore claim exemption from combatant training and service in the armed forces, but I am willing to serve in a noncombatant capacity if called. (Registrants granted this status are classified 1-A-O.)

_____

Signature

B. I am conscientiously opposed to war in any form and to any participation in training and service in any organization engaged in war or preparation for war. I hold moral, ethical, or religious beliefs which prevent my participating in war in any form. My conscience would not permit any acts which are inconsistent with these beliefs. I therefore claim exemption from both combatant and noncombatant training and service in the armed forces, but I realize I am subject to perform two years alternate service if called. (Registrants granted this status are classified (1-O.)

_____

Signature

Section II—Training and Belief

Instructions—To qualify for conscientious objector classification, you must present convincing information to your local board concerning your beliefs. The questions below are intended to give you a frame-

work in which to state the facts and describe the beliefs which are the basis for your conscientious objector claim. Although you are not required to answer each of the questions, it is suggested that you give all of them serious consideration and that you answer concisely, honestly, and, where possible, with factual substantiation. These questions are not to be regarded as inclusive [*sic*], and you may include other information which you believe will be of assistance to your local board. If necessary, continue your answer to any question on another sheet of paper but please make your answers as concise as possible so that the board may be able to understand more precisely your beliefs.

1. You are entitled to one personal appearance before your local draft board. Do you desire to exercise your right for your personal appearance before the board acts upon your claim for conscientious objection, or do you prefer to let this form and the file stand upon its merits and exercise your right to a personal appearance after the classification in the event the board's action is not favorable to your claim?
2. Briefly describe your beliefs which are the basis for your request for conscientious objector status.

3. Have you acquired these beliefs through traditional religious training or experience? (If your answer is yes, please answer questions 3*a* through 3*f*.) Yes —— No ——

   a. How and when did you acquire these beliefs?
   b. Are you member, or have you been a member, of a church, synagogue, or religious sect or organization?

c. For how long have you been a member? (Please offer the board some evidence of membership or active participation.)

d. Describe the training or experience by which you have acquired your ideas.

e. Do you disagree with the teachings of your church, synagogue, or religious sect as they relate to conscientious objection? Please explain.

f. If your claim is based on the beliefs of a certain church or religion, indicate those teachings or beliefs of the church or religion which have influenced your opposition to participation in war.

4. Have you acquired these beliefs outside a traditional religious experience or training? (If your answer to this question is yes, please answer questions 4*a* through 4*f*): Yes —— No——

a. How did you gain these beliefs, and how long have you held your beliefs?

b. Do you continue the training activity which resulted in your beliefs?

c. Have you ever been a member of a church, synagogue, or religious sect or organization?

d. If so, have you rejected the beliefs upon which that membership rested? Why?

e. Demonstrate to the board that your beliefs are more than a personal moral code. Are they held by others?

f. If your beliefs originated as a result of some sudden occurrence, event or educational experience, describe the nature of the event or occurrence and how it has influenced your beliefs.

5. The opinion of the Supreme Court in the *Seeger* case of 1965 has set forth the requirement that all sincere beliefs of conscientious objection that are valid under the law must be "based upon a power or being, or upon a faith, to which all else is subordinate or upon which all else is ultimately dependent". In the *Welsh* case of 1970 the Court expanded the ruling to include *deeply held* moral and ethical beliefs. Tell how and for how long your beliefs, thus, are and have been the controlling force in your life by:

   a. Describing those acts and expressions, public or private, which you feel demonstrate the depth, sincerity and consistency of your views on conscientious objection.
   b. Describing any positive actions on your part that would demonstrate the strength of your views.
   c. Stating what commitments, if any, you have made toward your future life which would demonstrate the strength of your convictions.
   d. Explaining how your conscientious objector beliefs, however founded, control and guide your life style with a degree of rigor similar to that of traditionally religious persons who would qualify for conscientious objection.

6. Please demonstrate how you can be certain that you are opposed to war in any form by your answers to the following questions:

   a. Do you believe that a nation or society has a right to defend itself against attack?
   b. If so, is it acceptable to you for that nation to

compel its members, other than conscientious objectors, to bear arms in the common defense?

c. If not, what obligations do you believe an individual owes to a society seeking to preserve itself?

d. If the nation were attacked, and you declined to participate in its defense, how can you be certain that you would decline to assist the military forces as a medical aide or other noncombatant?

e. A person's willingness to defend himself, members of his family, or his immediate associates may be consistent with a valid claim for conscientious objection. Are there any other instances in which you believe that forceful acts on your part are justified?

f. Have you ever been convicted of a crime involving physical force or violence? If so, please explain the circumstances to the board.

g. Have you ever been employed in a job or by an organization which contributed to the nation's military activities? If so, explain this to the board.

h. Explain how you can be reasonably certain that personal fear of death, injury, or military discipline is not the most influential factor in your claim for conscientious objection.

7. A man who has a valid claim for conscientious objection may have serious reservations about his nation's political or sociological policies. If you have such reservations, how can you be certain that they have not been the primary reason guiding you to make the claim of conscientious objection?

Section III—References

You may provide your local board with any additional evidence from any source that would support your claim of conscientious objection. You may, if you choose, provide in the space below the names of references who could provide the local board with information regarding your training and belief. To make your case stronger you should secure documents supporting your claim from these individuals. The documents should be sent to the local board and will be included in your selective service file.

NAME FULL ADDRESS	OCCUPATION OR POSITION	RELATIONSHIP TO YOU

Registrant's Certificate

Instructions—Every registrant claiming to be a conscientious objector shall make this certificate.

Notice—Imprisonment for not more than 5 years or a fine of not more than $10,000, or both fine and imprisonment, is provided by law as a penalty for knowingly making or being a party to the making of any false statement or certificate regarding or bearing upon a classification. (Military Selective Service Act).

I, ————, certify that I am the registrant named and described in the foregoing statements in this form; that I have read (or have had read to me) the statements made by and about me, and that each and every such statement is true and complete to the best of my knowledge, information, and belief. The statements made by me in the foregoing ———— in my own handwriting. (are, are not)

Registrant sign here

_____

(Signature or mark of registrant)

_____ _____

(Signature of witness to mark of registrant) (Date)

_____

(Date)

If another person has assisted the registrant in completing this form, such person shall sign the following statement:

I have assisted the registrant herein named in completing this form.

(Signature of person who has assisted)

(Occupation of person who has assisted)

(Address of person who has assisted)

(Date)

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